



May 16, 2018

Via FOIA online

U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Re: Freedom of Information Act request relating to Cleco Power LLC's Dolet Hills Power Station in De Soto Parish, Louisiana, and Brame Energy Center Rapides Parish, Louisiana

Dear EPA FOIA Officer:

On behalf of the Sierra Club, I am writing to request that the U.S. Environmental Protection Agency ("EPA") provide copies of the records described below pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and EPA regulations at 40 C.F.R. § 2.100, *et seq.* This request is sent to you because you were identified as the proper person to receive such requests. If this request should be directed at another person, please forward this request to that person.

Sierra Club is the nation's oldest grassroots organization. It has 822,000 members and 3 million supporters nationwide, including more than 3,300 members living in Louisiana. Sierra Club is dedicated to the protection and preservation of the natural and human environment. Sierra Club's purpose is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of industrial discharges of air and water pollutants, development of natural resources, and the use of fossil fuels. It has been conducting multiple public campaigns around these issues, including educating the public about deep-water drilling and the transportation of fossil fuels. This request is made on behalf of those education campaigns, as well as the organization's long-standing interest in government accountability and transparency.

Sierra Club Requests the Following Records:¹

Please provide copies of the following:

1. All records from May 2013 through present, reflecting EPA information requests pursuant to Section 114 of the Clean Air Act to Cleco Power, L.L.C., regarding the Dolet Hills Power Station, including correspondence (including electronic mail) between the EPA, its consultants or representatives, or Cleco Power, L.L.C., or its consultants or representatives, including all information and documents submitted by Cleco Power in response to EPA's information requests.
2. All records from May 2013 through present, reflecting EPA information requests pursuant to Section 114 of the Clean Air Act to Cleco Power, L.L.C., regarding the Brame Energy Center, including correspondence (including electronic mail) between the EPA, its consultants or representatives, or Cleco Power, L.L.C., or its consultants or representatives, including all information and documents submitted by Cleco Power in response to EPA's information requests.

Exempt Records

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information for the Sierra Club to appeal the denial. To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Sierra Club at the address listed below.

Fee Waiver Request

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). The Sierra Club has spent years

¹ "Records" means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, telephone conversations, telefaxes, e-mails, documents, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records relating to the topics described below at any stage of development, whether proposed, draft, pending, interim, final or otherwise. All of the foregoing are included in this request if they are in the possession of or otherwise under the control of EPA, and all of its Offices, Regions and other subdivisions.

promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA. The Sierra Club is a national, nonprofit, environmental organization with no commercial interest in obtaining the requested information. Instead, the Sierra Club intends to maintain public websites containing the requested information, so the public can access this important information regarding pollution in their communities.

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Sierra Club access to government records without payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (fee waiver provision intended to "prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and non-profit public interest groups.").

As explained below, this FOIA request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute – that "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records must specifically concern identifiable "operations and activities of the government."

The requested records relate to EPA programs, projects, and observations. These activities are unquestionably within the meaning of "identifiable operations or activities of the government." The Department of Justice Freedom of Information Act Guide expressly concedes that "in most cases records possessed by a federal agency will meet this threshold" of identifiable operations or activities of the government.

2. The disclosure of the requested documents must have an informative value and be "likely to contribute to an understanding of Federal government operations or activities."

The Department of Justice Freedom of Information Act Guide makes it clear that, in the Department of Justice's view, the "likely to contribute" determination hinges in part on whether the requested documents provide information that is not already in the public domain. This information will facilitate meaningful public participation in the decision-making processes and other agency actions relating to the enforcement of the Clean Air Act, therefore fulfilling the requirement that the documents requested be "meaningfully informative" and "likely to

contribute” to an understanding of your agencies’ oversight of Cleco Power’s Dolet Hills and Brame Energy Center power plants.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. Under this factor, the identity and qualifications of the requester—i.e., expertise in the subject area of the request and ability and intention to disseminate the information to the public—is examined.

The Sierra Club and its members have long-standing experience and expertise in the subject area of FOIA requests, specifically, issues related to Clean Air Act compliance. Sierra Club also has a long standing interest in government accountability and transparency.

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, including, but not limited to: analysis and distribution to the media, distribution through publication and mailing, posting on the Club’s website, emailing and list serve distribution to our members across the U.S., and via public meetings and events. Every year the Sierra Club website receives 26,298,200 unique visits and 30,358,239 page views; on average, the site gets 72,049 visits per day. Sierra Magazine is a bi-monthly magazine with a printed circulation of approximately 650,000 copies. Sierra Club Insider, an electronic newsletter, is sent to nearly 3,000,000 people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies, and where necessary, through the judicial system. In the past, the Sierra Club has published, posted, and disseminated numerous stories on coal and coal power plants regarding their impacts on health, the environment and alternative energy. This includes information on our various webpages, such as our [Beyond Coal Campaign](#) portal, our [Clean Energies Solutions](#) portal and our press releases. Sierra Club intends to share the information received from this FOIA request with the public.²

Sierra Club intends to share the information received from this FOIA request with our impacted members throughout Louisiana and across the region, the media and our allies who share a common interest in protecting air quality.

Sierra Club unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in the broad manner outlined above, and to do so in a manner that contributes to the understanding of the “public-at-large.”

² For example, Sierra Club sought information about coal export and permitting activities in Oregon via a state public records act request at the Port of Coos Bay. All correspondence is published online and has received extensive media attention from press releases on the subject. See Sierra Club Challenges Dirty and Dangerous Fossil Fuel Exports in Oregon, <http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuel-exports-oregon>. Sierra Club also recently publicized the results of its FOIA requests regarding agency job freezes, a story that was picked up by the Washington Post. Alexander Rony, *Trump Admin Policy Leaves 700 CDC Jobs Vacant*, The Planet, <http://www.sierraclub.org/planet/2017/05/trump-admin-policies-leave-700-cdc-jobs-vacant>; Lena H. Sun, *Nearly 700 vacancies at CDC because of Trump administration’s hiring freeze*, The Washington Post, https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm_term=.6c2e70d8581e.

4. The disclosure must contribute “significantly” to public understanding of government operations or activities. The public’s understanding must be likely to be enhanced by the disclosure to a significant extent.

The records requested will contribute to the public understanding of EPA’s “operations and activities,” as the requested records include information regarding EPA’s oversight of Cleco Power’s Dolet Hills Power Station and Brame Energy center. The disclosure of the requested records is essential to the public’s understanding of EPA’s operations and activities. After disclosure of these records, the public understanding of EPA’s activities will be significantly enhanced. The requirement that disclosure must contribute “significantly” to the public understanding is therefore met.

5. Whether the requester has a commercial interest that would be furthered by the requested disclosure.

The Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. The Sierra Club is a tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of the Sierra Club’s mission to inform the public on matters of vital importance to the environment and public health.

6. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

When a commercial interest is found to exist and that interest would be furthered by the requested disclosure, an agency must assess the magnitude of such interest in order to compare it to the “public interest” in disclosure. If no commercial interest exists, an assessment of that non-existent interest is not required.

As noted above, the Sierra Club has no commercial interest in the requested records. Disclosure of this information is not “primarily” in the Sierra Club’s commercial interest. On the other hand, it is clear that the disclosure of the information requested is in the public interest. It will contribute significantly to public understanding of EPA’s activities and oversight of the Clean Air Act, and in particular, the agency’s oversight of Cleco Power’s Dolet Hills Power Station and Brame Energy Center.

The Sierra Club respectfully requests, because the public will be the primary beneficiary of this requested information, that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A). In the event that your agency denies a fee waiver, please send a written explanation for the denial. Also, please continue to produce the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

Format of Requested Records

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. §552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”) Please provide all records in an electronic .pdf format that is text-searchable and OCR-formatted. Portfolios and embedded files within files are not readily-accessible. Please do not provide the records in a single or “batched” .pdf file.

Record Delivery

In responding to this request, please comply with all relevant deadlines and other obligations set forth in FOIA and the agency’s regulations. 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104. Please produce the records on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at (415) 977-5560 or by e-mail at joshua.smith@sierraclub.org



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